

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8-1 Interpretation

In their interpretation and application, the provisions of this Ordinance shall be held as the minimum requirements adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, or Ordinances, the most restrictive, or that imposing the higher standards, shall govern.

Section 8-2 Short Title

This Ordinance shall be known and may be cited as "The Town of Amherst Zoning Ordinance of 1963".

Section 8-3 Effective Date

This Ordinance shall take effect immediately upon adoption.

Section 8-4 Impact Fee Ordinance

SECTION 1. PURPOSE

1.1 This ordinance is enacted pursuant to RSA 674:16 and 674:21, and in order to:

- Promote public health, safety, convenience, welfare, and prosperity;
- Ensure that adequate and appropriate facilities are available to individuals who may come to be located in the Town of Amherst;
- Prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;
- Provide for the harmonious development of the municipality and its

environs;

- Ensure the proper arrangement and coordination of streets; and,
- Ensure streets of sufficient width to accommodate existing and prospective traffic.

SECTION 2. AUTHORITY

2.1 The planning board may, as a condition of approval of any subdivision or site plan, and when consistent with applicable board regulations, require an applicant to pay an impact fee for the applicant's fair share of off-site improvements to public facilities affected by the development. The term "impact fee" shall be as defined in RSA 674:21, V.

2.2 Nothing in this ordinance shall be construed to limit the existing authority of the Planning Board to disapprove proposed development that is scattered or premature, or that would require an excessive expenditure of public funds, or that would otherwise violate applicable ordinances and regulations. Nothing in this ordinance shall be construed to limit the planning board's authority to require off-site work to be performed by the applicant, in lieu of paying an impact fee, or the board's authority to impose other types of conditions of approval. Nothing in this ordinance shall be construed to affect types of fees governed by other statutes, town ordinances or regulations.

SECTION 3. ASSESSMENT METHODOLOGY

3.1 Proportionality: The amount of the impact fee shall be calculated by the planning board to be a proportional share of municipal capital improvement costs that is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

3.2 Existing Deficiencies: Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

3.3 Individual Assessments and Schedules of Impacts: The planning board may assess impact fees on an individual basis, or it may prepare and adopt schedules of impact fees for any municipal capital facility enumerated in RSA 674:21, V. If the planning board adopts a schedule of impact fees, then it shall use the schedule to assess impact fees for the particular municipal capital facility for which the schedule was prepared. If the planning board subsequently repeals a schedule of impact fees, the board may assess impact fees on an individual basis. The planning board's adoption of a schedule for one type of municipal capital facility shall not limit the authority of the planning board to assess and of the town to collect impact fees for other types of municipal capital facilities for which no schedule has been adopted, subject to the limitations of paragraphs 3.1 and

3.2 above. The adoption, amendment, or repeal of any impact fee schedule by the planning board shall be according to the procedures in RSA 675:6 and 7.

3.4 Waivers

The planning board may but has no obligation to grant full or partial waivers of impact fees where the planning board finds that one or more of the following criteria are met with respect to the particular capital facilities for which impact fees are normally assessed.

- a. The planning board may waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the planning board shall submit a copy of the waiver request to the board of selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. As a condition of the planning board granting such a waiver, the party seeking the waiver shall acknowledge in writing that the value of the contribution shall not be subject to the refund provisions of paragraph 4.3 below, and that the town of Amherst shall be under no obligation to recompense the developer or his successor in interest because of any failure of the developer or successor at any time to complete or undertake the development, in whole or in part, for which the impact fee would have been assessed.
- b. The planning board may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fee(s) waived.
- c. A person required by this ordinance to pay an impact fee (feepayer) may request a full or partial waiver of the amount of the impact fee for a particular development based on the results of an independent study of the demand on capital facility capacity and related costs attributable to that development. In support of such request, the feepayer shall prepare and submit to the planning board an independent fee calculation or other relevant study and supporting documentation of the capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the methodologies and schedules adopted by the town. The planning board shall review such study and render its decision. All costs incurred by the town for the review of such study, including consultant and counsel fees, shall be paid by the feepayer.

- d. The planning board may waive the assessment of impact fees in situations where, in its sole judgment, legitimate public purposes will be served by the waiver.

SECTION 4. ADMINISTRATION

4.1 Accounting: In accordance with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the town's general fund, may be spent upon order of the board of selectmen, and shall be used solely for the capital improvements for which they were collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fees were collected to meet.

4.2 Assessment, Collection, and Security: All impact fees required pursuant to this ordinance shall be assessed and collected, and any financial security required in the interim between assessment and collection, in a manner that is consistent with RSA 674:21, V.

4.3 Refund: Any portion of an impact fee that has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded, with any accrued interest, to the assessed party or successor in interest:

- When the subdivision or site plan approval expires under the respective rules of the planning board, or under the terms of the decision, without having become vested under RSA 674:39, and without any extension being granted by the planning board; OR
- When such approval is revoked under RSA 676:4-a; OR
- Six years after its collection, or, if any extension of development approval is granted by the planning board, six years after such extension is granted; OR
- Six years after its collection, whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the town, and the legislative body of the town has failed to appropriate the town's share of the capital improvement costs.

SECTION 5. APPEALS

In accord with RSA 676:5, III, appeals of the decision of the planning board in administering this ordinance may be made to superior court, as provided in RSA 677:15.

SECTION 6. EFFECTIVE DATE

This ordinance was adopted by the legislative body of the town of Amherst, acting at its duly warned annual meeting on March 6, 2004.

Section 8-5 Affordable Housing 3-14-89

ALLOWED BY CONDITIONAL USE PERMIT (3.6.04)

Innovative Land Use Control for Affordable Housing (see pages C5 thru C-8)

PURPOSE The Town recognizes the importance and benefit to the community and its citizens in the establishment and encouragement of suitable opportunities for affordable housing. The Town also recognizes that frequently, property that may be suitable as a location for affordable housing fails to meet some of the objective criteria that govern land use, and that strict adherence to all Zoning and Subdivision requirements may render the project economically unfeasible. The Town also recognizes that there are some situations in which normal Zoning or Subdivision requirements can be waived without necessarily sacrificing public health, safety and welfare so long as proper safeguards are maintained. Accordingly, it has been deemed advisable to adopt an innovative land use control in accordance with RSA 674:21 which would permit the Planning Board to identify a project that is a suitable candidate for the waiver of requirements, and when so identified, that project would be required to meet less stringent standards, provided certain criteria were met.

IDENTIFICATION OF SUITABLE PROJECT The Planning Board may review an application to construct affordable housing and identify the same as a suitable project if the applicant demonstrates to the Planning Board that the project meets the following criteria:

1. The project shall be constructed in a manner that is harmonious with neighboring developments, housing, and natural surroundings.
2. The project shall not detract from either the ecological or visual qualities of the environment.
3. The housing proposal shall be affordable within the meaning of the Ordinance.
4. The project shall comply with all site plan and/or subdivision regulations that apply, other than those waived hereunder.
5. Where there is no existing dwelling, the net tract area (total parcel minus wetlands) shall be at least four (4) acres and not more than fifteen (15) acres, except in the Northern Rural Zone, the net tract area shall be at least ten (10) acres but not more than twenty (20) acres. 3-12-91, 3-9-99

6. Where there is an existing dwelling, the net tract area (total parcel minus wetlands) shall be at least sufficient to provide a conforming conventional sized lot for the existing dwelling and the maximum net tract area shall be as listed above. 3-12-91

7. If an existing dwelling is located on the site and sufficient evidence is presented to the Planning Board to show that the existing dwelling is affordable within the meaning of this ordinance, than No. 6 shall not apply to that existing dwelling. (3-10-98)

ZONING STANDARDS Once the Planning Board has designated a proposed project as affordable and indicated that the same is satisfactory and compliant with the above standards, that project may be located on any suitable property irrespective of the zoning district classification.

Maximum number of units approved in a calendar year shall not exceed one percent (1%) of the number of dwelling units existing in Town in the preceding calendar year. This figure shall be determined each January.

LOT SIZE, DENSITY, SETBACKS, AND OPEN SPACE The traditional lot size, density, setback, and open space requirements applicable in other districts shall not apply and the Planning Board shall establish the lot size, density, setbacks, and open space requirements for each project as they determine to be necessary in the best interest of the Town and to facilitate the project, provided however, that the following limitations shall apply:

1. Lot size and density shall be not less than three quarters (3/4) of an acre for a detached single family unit and not more than two units per acre for multi-family housing, except in the Northern Rural Zone where the minimum lot size for a detached single family unit would be two (2) acres and no more than one unit per acre for multi-family housing.
2. Open space shall be sufficient to accommodate the needs of the proposed occupants of the project.
3. Setbacks shall be sufficient to buffer and protect adjacent properties and the street from encroachment. At a minimum there shall be a fifty (50) foot setback from the property line around the perimeter of the property. (3.8.05)
4. No structure shall be constructed to a height greater than thirty five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation.
5. The maximum unit size shall not exceed 1,300 square feet of heated living space, excluding basement areas. This provision shall remain with the development for a period of ten years from the date of the first certificate of occupancy. 3-12-02

RULES AND REGULATIONS The Planning Board may adopt appropriate rules and regulations to implement the review process contemplated hereunder. Such rules shall at a minimum provide for the developer to restrict the sale or lease of the units through appropriate recorded covenants to those who qualify pursuant to the definition of affordable housing contained in this Ordinance.

DEFINITION Affordable Housing shall be a residential dwelling unit available for sale or lease at a cost not to exceed the amount a household or family, whose gross annual income is one hundred percent (100%) or less of the median income. Median income is the amount defined by the U.S. Census for the Nashua Primary Metropolitan Statistical Area as updated yearly. Median income figures, adjusted for number of occupants, shall be determined annually by the Planning Board. 3-14-89 (3-10-98)

NOTE: See Non-Residential Site Review Regulations for Project Suitability Procedure Regulations. Affordable Housing.